IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

H. DAVID ROY,

Appellant,

v.

MBW CONSTRUCTION, INC.,

Respondent.

DOCKET NUMBER WD77615

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DATE: November 3, 2015

APPEAL FROM

The Circuit Court of Clay County, Missouri The Honorable Daren L. Adkins, Judge

JUDGES

Division Three: Ellis, P.J., and Mitchell and Witt, JJ.

CONCURRING.

ATTORNEYS

Stephen W. Nichols Kansas City, MO

Attorney for Appellant,

Breahn R. Vokolek and Gary K. Patton Liberty, MO

Attorneys for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

H. DAVID ROY,)
Appellant) t,)
v.	OPINION FILED:
MBW CONSTRUCTION, INC.,) November 3, 2015
Respondent) t)
Respondent	· <i>)</i>

WD77615 Clay County

Before Division Three Judges: Joseph M. Ellis, Presiding Judge, and Karen King Mitchell and Gary D. Witt, Judges

H. David Roy appeals the trial court's judgment in favor of Respondent, MBW Construction, Inc., on his claims for breach of contract, unjust enrichment, negligent misrepresentation, and violation of the Missouri Merchandising Practices Act. Roy argues that the court erroneously applied the law and that its judgment was against the weight of the evidence regarding his breach of contract and unjust enrichment claims. Roy also argues that the court erred in denying his motion for new trial based upon newly discovered evidence demonstrating that one of MBW's witnesses gave deliberately false testimony.

AFFIRMED.

Division Three holds:

- 1. Where parties do not request findings of fact and conclusions of law from the trial court, all evidence—including credibility determinations—is viewed on appeal in the light most favorable to the judgment.
- 2. The evidence, when viewed in a light most favorable to the judgment, fully supported the trial court's decision regarding various credits and overage charges.

- 3. Equitable estoppel arises from the unfairness of allowing a party to belatedly assert known rights on which the other has, in good faith, relied thereby and become disadvantaged.
- 4. Roy is equitably estopped from claiming breach of contract related to construction of the garage and laundry area because, by his silence and acceptance of the deed, Roy represented to MBW that he was satisfied with the garage and laundry area as built.
- 5. A new trial should not be awarded on the ground of newly discovered evidence unless the moving party first satisfies the following prerequisites: (1) the evidence has come to his knowledge since the trial; (2) his failure to learn of such evidence sooner was not due to want of diligence; (3) such evidence is so material that it probably would produce a different result if the new trial were granted; (4) it is not cumulative only; (5) the object of the testimony is not merely to impeach the character or credit of a witness; and (6) the affidavit of the witness himself is produced or its absence accounted for.
- 6. Roy was not entitled to a new trial on his claim of newly discovered evidence because he made no allegation or showing that his failure to discover this evidence earlier "was not due to want of diligence," and the object of the evidence was merely to impeach the character or credit of the defendant, as it did not go to any of the counts raised in the petition.

Opinion by: Karen King Mitchell, Judge

November 3, 2015

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.